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ESIS, INC., ACE AMERICAN INSURANCE

COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MARIA ABRAHIM,

Plaintiff,

v.

ESIS, INC., ACE AMERICAN
INSURANCE COMPANY,,

Defendants.

Case No. C07-4014 JCS

**DEFENDANTS ESIS, INC., AND ACE
AMERICAN INSURANCE COMPANY'S
ANSWER TO PLAINTIFF'S COMPLAINT
FOR DAMAGES**

Defendants ESIS, Inc., and Ace American Insurance Company ("Defendants") hereby answers Plaintiff Maria Abraham's ("Plaintiff") Complaint for Damages ("Complaint") as follows:

NATURE OF ACTION

1. Answering Paragraph 1 of the Complaint, Defendants admit that Plaintiff's Complaint purports to state a claim for wrongful termination in violation of public policy and for unpaid wages. Except as expressly admitted herein, Defendants deny the remaining allegations contained in this Paragraph.

JURISDICTION & VENUE

2. Answering Paragraph 2 of the Complaint, Defendants admit that this action is between citizens of different States. Except as expressly admitted herein, Defendants deny the

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**DEFTS' ANSWER TO PLAINTIFF'S
COMPLAINT**

1 remaining allegations contained in this Paragraph.

2 3. Answering Paragraph 3 of the Complaint, Defendants admit that Plaintiff was
3 employed within the Northern District of California. Except as expressly admitted herein,
4 Defendants deny the remaining allegations contained in this Paragraph.

5 **THE PARTIES**

6 4. Answering Paragraph 4 of the Complaint, Defendants admit the allegations
7 contained therein.

8 5. Answering Paragraph 5 of the Complaint, Defendants admit the allegations
9 contained therein.

10 6. Answering Paragraph 6 of the Complaint, Defendants admit the allegations
11 contained therein.

12 **FIRST CLAIM FOR RELIEF**
13 **(Termination in Violation of Public Policy)**

14 7. Answering Paragraph 7 of the Complaint, Defendants hereby incorporate by
15 reference and replead their answers to all preceding Paragraphs.

16 8. Answering Paragraph 8 of the Complaint, Defendants deny the allegations
17 contained therein.

18 9. Answering Paragraph 9 of the Complaint, Defendants lack knowledge and
19 information sufficient to form a belief as to the truth of the allegations contained therein and on that
20 basis deny each and every such allegation.

21 10. Answering Paragraph 10 of the Complaint, Defendants deny the allegations
22 contained therein.

23 11. Answering Paragraph 11 of the Complaint, Defendants deny the allegations
24 contained therein.

25 12. Answering Paragraph 12 of the Complaint, Defendants deny the allegations
26 contained therein.

27 13. Answering Paragraph 13 of the Complaint, Defendants deny the allegations
28 contained therein.

1 14. Answering Paragraph 14 of the Complaint, Defendants deny the allegations
2 contained therein.

3 15. Answering Paragraph 15 of the Complaint, Defendants deny the allegations
4 contained therein.

5 16. Answering Paragraph 16 of the Complaint, Defendants deny the allegations
6 contained therein.

7 17. Answering Paragraph 17 of the Complaint, Defendants state that this
8 paragraph contains legal arguments that do not require an answer. To the extent an answer is
9 required, Defendants deny the allegations of this paragraph.

10 18. Answering Paragraph 18 of the Complaint, Defendants deny the allegations
11 contained therein.

12 19. Answering Paragraph 19 of the Complaint, Defendants deny that they
13 engaged in discriminatory acts. Defendants lack knowledge and information sufficient to form a
14 belief as to the truth of the remaining allegations contained in this paragraph and on that basis deny
15 them.

16 20. Answering Paragraph 20 of the Complaint, Defendants deny the allegations
17 contained therein.

18 **SECOND CLAIM FOR RELIEF**
19 **(Unpaid Wages Due)**

20 21. Answering Paragraph 21 of the Complaint, Defendants hereby incorporate by
21 reference and plead their answers to all preceding Paragraphs

22 22. Answering Paragraph 22 of the Complaint, Defendants state that this
23 paragraph contains legal arguments that do not require an answer. To the extent an answer is
24 required, Defendants deny the allegations of this paragraph.

25 23. Answering Paragraph 23 of the Complaint, Defendants lack knowledge and
26 information sufficient to form a belief as to the truth of the allegations contained therein and on that
27 basis deny each and every such allegation.
28

24. Answering Paragraph 24 of the Complaint, Defendants deny the allegations contained therein.

25. Answering Paragraph 25 of the Complaint, Defendants state that this paragraph contains legal arguments that do not require an answer. To the extent an answer is required, Defendants deny the allegations of this paragraph.

26. Answering Paragraph 26 of the Complaint, Defendants state that this paragraph contains legal arguments that do not require an answer. To the extent an answer is required, Defendants deny the allegations of this paragraph.

AFFIRMATIVE DEFENSES

Defendants ESIS, INC., and ACE AMERICAN INSURANCE COMPANY state the following facts as separate affirmative defenses to Plaintiff's Complaint:

1. AS AND FOR A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendants allege:

That some or all of Plaintiff's damages have been caused by the failure of Plaintiff to exercise reasonable diligence in caring for her alleged losses and damages. Defendants' liability, if any, must therefore be limited to the amount of damages that would have been suffered if Plaintiff had exercised the due care and diligence required of her.

2. AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendants allege:

That at all times relevant, Defendants promulgated an anti-discrimination policy and complaint procedure which was communicated to Plaintiff, and Defendants exercised reasonable care to prevent and correct promptly any inappropriate conduct. Plaintiff unreasonably failed to take advantage of the established complaint procedures, failed to take advantage of other preventative or corrective opportunities provided by Defendants and otherwise failed to avoid harm.

3. AS AND FOR A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendants

1 allege:

2 That Plaintiff and Defendants have a valid agreement that requires that the claims set
3 forth in the Complaint be resolved via binding arbitration rather than by litigation in court.

4 4. AS AND FOR A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE
5 TO EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendants
6 allege:

7 That Plaintiff had an affirmative duty to take action that would have mitigated her
8 damages including, without limitation, finding other employment following the termination of her
9 employment relationship with ESIS, yet she failed to do so.

10 5. AS AND FOR A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
11 EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendants
12 allege:

13 That Plaintiff's claims fail because she has been fully compensated for any wages
14 owed.

15 6. AS AND FOR A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
16 EACH AND EVERY CAUSE OF ACTION SET FORTH IN THE COMPLAINT, Defendants
17 allege:

18 That any alleged failure by Defendants to pay Plaintiff wages due was not "willful"
19 under Labor Code section 203, and thus no waiting time penalties are owed.

20 Defendants have not yet completed a thorough investigation and study or completed
21 discovery of all facts and circumstances of the subject matter of Plaintiff's claims, and accordingly,
22 reserve the right to amend, modify, revise or supplement this Answer, and to plead such further
23 defenses and take such further actions as Defendants may deem proper and necessary in Defendants'
24 defense upon the completion of said investigation and study.

25 WHEREFORE, Defendants pray for judgment against Plaintiff as follows:


26 1. Plaintiff take nothing by virtue of the claims filed herein and that the claims
27 be dismissed in their entirety with prejudice;

2. For all reasonable costs incurred by Defendants in connection with the defense of this matter;

3. For attorneys' fees; and

4. For such other and further relief as the Court may deem proper.

Dated: September 26, 2007


MARLENE S. MURACO
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Attorneys for Defendants
ESIS, INC., ACE AMERICAN INSURANCE
COMPANY

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